

1 Mildred K. O'Linn (State Bar No. 159055)
missy.olinn@manningkass.com

2 Lynn Carpenter (State Bar No. 310011)
lynn.carpenter@manningkass.com

3 Maya Sorensen (State Bar No. 250722)
Maya.Sorensen@manningkass.com

4 **MANNING & KASS
ELLROD, RAMIREZ, TRESTER LLP**

5 One California St., Ste 900
San Francisco, California 94111

6 Telephone: (415) 217-6990

7 Facsimile: (415) 217-6999

8 Attorneys for Defendants, CITY OF
FRESNO

9
10 **UNITED STATES DISTRICT COURT**

11 **EASTERN DISTRICT OF CALIFORNIA, FRESNO DIVISION**

12 MARIA SOSA, L.S. by and through
13 guardian ad litem MARIA SOSA, M.S.
14 by and through guardian ad
15 litem JENNIFER LOPEZ,
individually and as successors-in-
interest to Maximiliano Sosa,

16 Plaintiffs,

17 v.

18 CITY OF FRESNO and DOES 1-5,

19 Defendants.

Case No. 1:24-cv-01039-JLT-SAB
Dist. Court Judge Jennifer L. Thurston
Magistrate Judge Barbara A. McAuliffe

**DEFENDANT CITY OF FRESNO'S
ANSWER TO PLAINTIFFS' FIRST
AMENDED COMPLAINT FOR
DAMAGES**

FAC Filed: 10/04/24
Trial Date: Not Yet Set

20
21 Defendants CITY OF FRESNO ("Defendant") hereby answers Plaintiffs'
22 First Amended Complaint for Damages on file herein (Doc. 11, hereinafter referred
23 to as the "FAC") and Defendant hereby admits, denies, and alleges as follows:

24 1. Answering Paragraph 1 of the FAC: Answering Defendant does not have
25 sufficient knowledge, or information or belief, to enable Defendant to answer the
26 allegations contained within this paragraph, as stated, and on those grounds denies
27 generally and specifically each and every allegation contained therein – and
28 Defendant denies all liability and/or wrongdoing.

1 2. Answering Paragraph 2 of the FAC: Answering Defendant admits that
2 jurisdiction is vested in this Court under 28 U.S.C. § 1331 and 28 U.S.C. § 1343(a)(3)-
3 (4).

4 3. Answering Paragraph 3 of the FAC: Answering Defendant admits that
5 this Court has supplemental jurisdiction over Plaintiffs’ state law claims under 28
6 U.S.C. § 1337(a).

7 4. Answering Paragraph 4 of the FAC: Answering Defendant admits that
8 venue is proper under 28 U.S.C. § 1391(b).

9 5. Answering Paragraph 5 of the FAC: Answering Defendant admits that
10 plaintiffs submitted government tort claims to the City that were rejected.

11 6. Answering Paragraph 6 of the FAC: Answering Defendant admits that
12 plaintiffs submitted government tort claims to the City that were rejected.

13 7. Answering Paragraph 7 of the FAC: Answering Defendant admits that
14 plaintiffs submitted government tort claims to the City that were rejected.

15 8. Answering Paragraph 8 of the FAC: Answering Defendant does not have
16 sufficient knowledge, or information or belief, to enable Defendant to answer the
17 allegations contained within this paragraph, as stated, and on those grounds denies
18 generally and specifically each and every allegation contained therein – and
19 Defendant denies all liability and/or wrongdoing.

20 9. Answering Paragraph 9 of the FAC: Answering Defendant does not have
21 sufficient knowledge, or information or belief, to enable Defendant to answer the
22 allegations contained within this paragraph, as stated, and on those grounds denies
23 generally and specifically each and every allegation contained therein – and
24 Defendant denies all liability and/or wrongdoing.

25 10. Answering Paragraph 10 of the FAC: Answering Defendant does not
26 have sufficient knowledge, or information or belief, to enable Defendant to answer
27 the allegations contained within this paragraph, as stated, and on those grounds denies
28 generally and specifically each and every allegation contained therein – and

1 Defendant denies all liability and/or wrongdoing.

2 11. Answering Paragraph 11 of the FAC: Answering Defendant does not
3 have sufficient knowledge, or information or belief, to enable Defendant to answer
4 the allegations contained within this paragraph, as stated, and on those grounds denies
5 generally and specifically each and every allegation contained therein – and
6 Defendant denies all liability and/or wrongdoing.

7 12. Answering Paragraph 12 of the FAC: Answering Defendant admits that
8 the City of Fresno was at all times mentioned in the Complaint a municipal
9 corporation duly authorized to operate under the laws of the state of California, and
10 operated the Fresno Police Department under its supervision. As to the remaining
11 allegations of this paragraph, Defendant does not have sufficient knowledge, or
12 information or belief, to enable Defendant to answer the allegations contained within
13 this paragraph, as stated, and on those grounds denies generally and specifically each
14 and every allegation contained therein – and Defendant denies all liability and/or
15 wrongdoing.

16 13. Answering Paragraph 13 of the FAC: Answering Defendant does not
17 have sufficient knowledge, or information or belief, to enable Defendant to answer
18 the allegations contained within this paragraph, as stated, and on those grounds denies
19 generally and specifically each and every allegation contained therein – and
20 Defendant denies all liability and/or wrongdoing.

21 14. Answering Paragraph 14 of the FAC: Answering Defendant does not
22 have sufficient knowledge, or information or belief, to enable Defendant to answer
23 the allegations contained within this paragraph, as stated, and on those grounds denies
24 generally and specifically each and every allegation contained therein – and
25 Defendant denies all liability and/or wrongdoing.

26 15. Answering Paragraph 15 of the FAC: Answering Defendant does not
27 have sufficient knowledge, or information or belief, to enable Defendant to answer
28 the allegations contained within this paragraph, as stated, and on those grounds denies

1 generally and specifically each and every allegation contained therein – and
2 Defendant denies all liability and/or wrongdoing.

3 16. Answering Paragraph 16 of the FAC: Answering Defendant does not
4 have sufficient knowledge, or information or belief, to enable Defendant to answer
5 the allegations contained within this paragraph, as stated, and on those grounds denies
6 generally and specifically each and every allegation contained therein – and
7 Defendant denies all liability and/or wrongdoing.

8 17. Answering Paragraph 17 of the FAC: Answering Defendant does not
9 have sufficient knowledge, or information or belief, to enable Defendant to answer
10 the allegations contained within this paragraph, as stated, and on those grounds denies
11 generally and specifically each and every allegation contained therein – and
12 Defendant denies all liability and/or wrongdoing.

13 18. Answering Paragraph 18 of the FAC: Answering Defendant does not
14 have sufficient knowledge, or information or belief, to enable Defendant to answer
15 the allegations contained within this paragraph, as stated, and on those grounds denies
16 generally and specifically each and every allegation contained therein – and
17 Defendant denies all liability and/or wrongdoing.n

18 19. Answering Paragraph 19 of the FAC: Answering Defendant does not
19 have sufficient knowledge, or information or belief, to enable Defendant to answer
20 the allegations contained within this paragraph, as stated, and on those grounds denies
21 generally and specifically each and every allegation contained therein – and
22 Defendant denies all liability and/or wrongdoing.

23 20. Answering Paragraph 20 of the FAC: Answering Defendant does not
24 have sufficient knowledge, or information or belief, to enable Defendant to answer
25 the allegations contained within this paragraph, as stated, and on those grounds denies
26 generally and specifically each and every allegation contained therein – and
27 Defendant denies all liability and/or wrongdoing.

28 21. Answering Paragraph 21 of the FAC: Answering Defendant does not

1 have sufficient knowledge, or information or belief, to enable Defendant to answer
2 the allegations contained within this paragraph, as stated, and on those grounds denies
3 generally and specifically each and every allegation contained therein – and
4 Defendant denies all liability and/or wrongdoing.

5 22. Answering Paragraph 22 of the FAC: this paragraph does not contain
6 any factual allegations against answering Defendant, and on those grounds alone this
7 paragraph remains unanswered.

8 23. Answering Paragraph 23 of the FAC: Answering Defendant does not
9 have sufficient knowledge, or information or belief, to enable Defendant to answer
10 the allegations contained within this paragraph, as stated, and on those grounds denies
11 generally and specifically each and every allegation contained therein – and
12 Defendant denies all liability and/or wrongdoing.

13 24. Answering Paragraph 24 of the FAC: Answering Defendant does not
14 have sufficient knowledge, or information or belief, to enable Defendant to answer
15 the allegations contained within this paragraph, as stated, and on those grounds denies
16 generally and specifically each and every allegation contained therein – and
17 Defendant denies all liability and/or wrongdoing.

18 25. Answering Paragraph 25 of the FAC: Answering Defendant does
19 not have sufficient knowledge, or information or belief, to enable Defendant to answer
20 the allegations contained within this paragraph, as stated, and on those grounds denies
21 generally and specifically each and every allegation contained therein – and
22 Defendant denies all liability and/or wrongdoing.

23 26. Answering Paragraph 26 of the FAC: Answering Defendant does not
24 have sufficient knowledge, or information or belief, to enable Defendant to answer
25 the allegations contained within this paragraph, as stated, and on those grounds denies
26 generally and specifically each and every allegation contained therein – and
27 Defendant denies all liability and/or wrongdoing.

28 27. Answering Paragraph 27 of the FAC: Answering Defendant does not

1 have sufficient knowledge, or information or belief, to enable Defendant to answer
2 the allegations contained within this paragraph, as stated, and on those grounds denies
3 generally and specifically each and every allegation contained therein – and
4 Defendant denies all liability and/or wrongdoing.

5 28. Answering Paragraph 28 of the FAC: Answering Defendant does not
6 have sufficient knowledge, or information or belief, to enable Defendant to answer
7 the allegations contained within this paragraph, as stated, and on those grounds denies
8 generally and specifically each and every allegation contained therein – and
9 Defendant denies all liability and/or wrongdoing.

10 29. Answering Paragraph 29 of the FAC: Answering Defendant does not
11 have sufficient knowledge, or information or belief, to enable Defendant to answer
12 the allegations contained within this paragraph, as stated, and on those grounds denies
13 generally and specifically each and every allegation contained therein – and
14 Defendant denies all liability and/or wrongdoing.

15 30. Answering Paragraph 30 of the FAC: Answering Defendant does not
16 have sufficient knowledge, or information or belief, to enable Defendant to answer
17 the allegations contained within this paragraph, as stated, and on those grounds denies
18 generally and specifically each and every allegation contained therein – and
19 Defendant denies all liability and/or wrongdoing.

20 31. Answering Paragraph 31 of the FAC: Answering Defendant does not
21 have sufficient knowledge, or information or belief, to enable Defendant to answer
22 the allegations contained within this paragraph, as stated, and on those grounds denies
23 generally and specifically each and every allegation contained therein – and
24 Defendant denies all liability and/or wrongdoing.

25 32. Answering Paragraph 32 of the FAC: Answering Defendant does not
26 have sufficient knowledge, or information or belief, to enable Defendant to answer
27 the allegations contained within this paragraph, as stated, and on those grounds denies
28 generally and specifically each and every allegation contained therein – and

1 Defendant denies all liability and/or wrongdoing.

2 33. Answering Paragraph 33 of the FAC: Answering Defendant does not
3 have sufficient knowledge, or information or belief, to enable Defendant to answer
4 the allegations contained within this paragraph, as stated, and on those grounds denies
5 generally and specifically each and every allegation contained therein – and
6 Defendant denies all liability and/or wrongdoing.

7 34. Answering Paragraph 34 of the FAC: Answering Defendant does not
8 have sufficient knowledge, or information or belief, to enable Defendant to answer
9 the allegations contained within this paragraph, as stated, and on those grounds denies
10 generally and specifically each and every allegation contained therein – and
11 Defendant denies all liability and/or wrongdoing.

12 35. Answering Paragraph 35 of the FAC: Answering Defendant does not
13 have sufficient knowledge, or information or belief, to enable Defendant to answer
14 the allegations contained within this paragraph, as stated, and on those grounds denies
15 generally and specifically each and every allegation contained therein – and
16 Defendant denies all liability and/or wrongdoing.

17 36. Answering Paragraph 36 of the FAC: Answering Defendant does not
18 have sufficient knowledge, or information or belief, to enable Defendant to answer
19 the allegations contained within this paragraph, as stated, and on those grounds denies
20 generally and specifically each and every allegation contained therein – and
21 Defendant denies all liability and/or wrongdoing.

22 37. Answering Paragraph 37 of the FAC: Answering Defendant does not
23 have sufficient knowledge, or information or belief, to enable Defendant to answer
24 the allegations contained within this paragraph, as stated, and on those grounds denies
25 generally and specifically each and every allegation contained therein – and
26 Defendant denies all liability and/or wrongdoing.

27 38. Answering Paragraph 38 of the FAC: Answering Defendant repeats,
28 reiterates, and re-alleges all of the admissions and denials contained in the foregoing

1 Answer which are set forth to each and every allegation contained in paragraphs 1
2 through 37, inclusive, of the FAC.

3 39. Answering Paragraph 39 of the FAC: Answering Defendant does not
4 have sufficient knowledge, or information or belief, to enable Defendant to answer
5 the allegations contained within this paragraph, as stated, and on those grounds denies
6 generally and specifically each and every allegation contained therein – and
7 Defendant denies all liability and/or wrongdoing.

8 40. Answering Paragraph 40 of the FAC: this paragraph does not contain
9 any factual allegations against answering Defendant, and on those grounds alone this
10 paragraph remains unanswered.

11 41. Answering Paragraph 41 of the FAC: Answering Defendant does not
12 have sufficient knowledge, or information or belief, to enable Defendant to answer
13 the allegations contained within this paragraph, as stated, and on those grounds denies
14 generally and specifically each and every allegation contained therein – and
15 Defendant denies all liability and/or wrongdoing.

16 42. Answering Paragraph 42 of the FAC: Answering Defendant does not
17 have sufficient knowledge, or information or belief, to enable Defendant to answer
18 the allegations contained within this paragraph, as stated, and on those grounds denies
19 generally and specifically each and every allegation contained therein – and
20 Defendant denies all liability and/or wrongdoing.

21 43. Answering Paragraph 43 of the FAC: Answering Defendant does not
22 have sufficient knowledge, or information or belief, to enable Defendant to answer
23 the allegations contained within this paragraph, as stated, and on those grounds denies
24 generally and specifically each and every allegation contained therein – and
25 Defendant denies all liability and/or wrongdoing.

26 44. Answering Paragraph 44 of the FAC: Answering Defendant does not
27 have sufficient knowledge, or information or belief, to enable Defendant to answer
28 the allegations contained within this paragraph, as stated, and on those grounds denies

1 generally and specifically each and every allegation contained therein – and
2 Defendant denies all liability and/or wrongdoing.

3 45. Answering Paragraph 45 of the FAC: Answering Defendant does not
4 have sufficient knowledge, or information or belief, to enable Defendant to answer
5 the allegations contained within this paragraph, as stated, and on those grounds denies
6 generally and specifically each and every allegation contained therein – and
7 Defendant denies all liability and/or wrongdoing.

8 46. Answering Paragraph 46 of the FAC: Answering Defendant does not
9 have sufficient knowledge, or information or belief, to enable Defendant to answer
10 the allegations contained within this paragraph, as stated, and on those grounds denies
11 generally and specifically each and every allegation contained therein – and
12 Defendant denies all liability and/or wrongdoing.

13 47. Answering Paragraph 47 of the FAC: Answering Defendant does not
14 have sufficient knowledge, or information or belief, to enable Defendant to answer
15 the allegations contained within this paragraph, as stated, and on those grounds denies
16 generally and specifically each and every allegation contained therein – and
17 Defendant denies all liability and/or wrongdoing.

18 48. Answering Paragraph 48 of the FAC: Answering Defendant does not
19 have sufficient knowledge, or information or belief, to enable Defendant to answer
20 the allegations contained within this paragraph, as stated, and on those grounds denies
21 generally and specifically each and every allegation contained therein – and
22 Defendant denies all liability and/or wrongdoing.

23 49. Answering Paragraph 49 of the FAC: Answering Defendant does not
24 have sufficient knowledge, or information or belief, to enable Defendant to answer
25 the allegations contained within this paragraph, as stated, and on those grounds denies
26 generally and specifically each and every allegation contained therein – and
27 Defendant denies all liability and/or wrongdoing.

28 50. Answering Paragraph 50 of the FAC: Answering Defendant does not

1 have sufficient knowledge, or information or belief, to enable Defendant to answer
2 the allegations contained within this paragraph, as stated, and on those grounds denies
3 generally and specifically each and every allegation contained therein – and
4 Defendant denies all liability and/or wrongdoing.

5 51. Answering Paragraph 51 of the FAC: Answering Defendant repeats,
6 reiterates, and re-alleges all of the admissions and denials contained in the foregoing
7 Answer which are set forth to each and every allegation contained in paragraphs 1
8 through 50, inclusive, of the FAC.

9 52. Answering Paragraph 52 of the FAC: Answering Defendant does not
10 have sufficient knowledge, or information or belief, to enable Defendant to answer
11 the allegations contained within this paragraph, as stated, and on those grounds denies
12 generally and specifically each and every allegation contained therein – and
13 Defendant denies all liability and/or wrongdoing.

14 53. Answering Paragraph 53 of the FAC: Answering Defendant does not
15 have sufficient knowledge, or information or belief, to enable Defendant to answer
16 the allegations contained within this paragraph, as stated, and on those grounds denies
17 generally and specifically each and every allegation contained therein – and
18 Defendant denies all liability and/or wrongdoing.

19 54. Answering Paragraph 54 of the FAC: Answering Defendant does not
20 have sufficient knowledge, or information or belief, to enable Defendant to answer
21 the allegations contained within this paragraph, as stated, and on those grounds denies
22 generally and specifically each and every allegation contained therein – and
23 Defendant denies all liability and/or wrongdoing.

24 55. Answering Paragraph 55 of the FAC: Answering Defendant does not
25 have sufficient knowledge, or information or belief, to enable Defendant to answer
26 the allegations contained within this paragraph, as stated, and on those grounds denies
27 generally and specifically each and every allegation contained therein – and
28 Defendant denies all liability and/or wrongdoing.

1 56. Answering Paragraph 56 of the FAC: Answering Defendant does not
2 have sufficient knowledge, or information or belief, to enable Defendant to answer
3 the allegations contained within this paragraph, as stated, and on those grounds denies
4 generally and specifically each and every allegation contained therein – and
5 Defendant denies all liability and/or wrongdoing.

6 57. Answering Paragraph 57 of the FAC: Answering Defendant does not
7 have sufficient knowledge, or information or belief, to enable Defendant to answer
8 the allegations contained within this paragraph, as stated, and on those grounds denies
9 generally and specifically each and every allegation contained therein – and
10 Defendant denies all liability and/or wrongdoing.

11 58. Answering Paragraph 58 of the FAC: Answering Defendant repeats,
12 reiterates, and re-alleges all of the admissions and denials contained in the foregoing
13 Answer which are set forth to each and every allegation contained in paragraphs 1
14 through 57, inclusive, of the FAC.

15 59. Answering Paragraph 59 of the FAC: Answering Defendant does not
16 have sufficient knowledge, or information or belief, to enable Defendant to answer
17 the allegations contained within this paragraph, as stated, and on those grounds denies
18 generally and specifically each and every allegation contained therein – and
19 Defendant denies all liability and/or wrongdoing.

20 60. Answering Paragraph 60 of the FAC: Answering Defendant does not
21 have sufficient knowledge, or information or belief, to enable Defendant to answer
22 the allegations contained within this paragraph, as stated, and on those grounds denies
23 generally and specifically each and every allegation contained therein – and
24 Defendant denies all liability and/or wrongdoing.

25 61. Answering Paragraph 61 of the FAC: Answering Defendant does not
26 have sufficient knowledge, or information or belief, to enable Defendant to answer
27 the allegations contained within this paragraph, as stated, and on those grounds denies
28 generally and specifically each and every allegation contained therein – and

1 Defendant denies all liability and/or wrongdoing.

2 62. Answering Paragraph 62 of the FAC: Answering Defendant does not
3 have sufficient knowledge, or information or belief, to enable Defendant to answer
4 the allegations contained within this paragraph, as stated, and on those grounds denies
5 generally and specifically each and every allegation contained therein – and
6 Defendant denies all liability and/or wrongdoing.

7 63. Answering Paragraph 63 of the FAC: Answering Defendant does not
8 have sufficient knowledge, or information or belief, to enable Defendant to answer
9 the allegations contained within this paragraph, as stated, and on those grounds denies
10 generally and specifically each and every allegation contained therein – and
11 Defendant denies all liability and/or wrongdoing.

12 64. Answering Paragraph 64 of the FAC: Answering Defendant does not
13 have sufficient knowledge, or information or belief, to enable Defendant to answer
14 the allegations contained within this paragraph, as stated, and on those grounds denies
15 generally and specifically each and every allegation contained therein – and
16 Defendant denies all liability and/or wrongdoing.

17 65. Answering Paragraph 65 of the FAC: Answering Defendant does not
18 have sufficient knowledge, or information or belief, to enable Defendant to answer
19 the allegations contained within this paragraph, as stated, and on those grounds denies
20 generally and specifically each and every allegation contained therein – and
21 Defendant denies all liability and/or wrongdoing.

22 66. Answering Paragraph 66 of the FAC: Answering Defendant does not
23 have sufficient knowledge, or information or belief, to enable Defendant to answer
24 the allegations contained within this paragraph, as stated, and on those grounds denies
25 generally and specifically each and every allegation contained therein – and
26 Defendant denies all liability and/or wrongdoing.

27 67. Answering Paragraph 67 of the FAC: Answering Defendant does not
28 have sufficient knowledge, or information or belief, to enable Defendant to answer

1 the allegations contained within this paragraph, as stated, and on those grounds denies
2 generally and specifically each and every allegation contained therein – and
3 Defendant denies all liability and/or wrongdoing.

4 68. Answering Paragraph 68 of the FAC: Answering Defendant does not
5 have sufficient knowledge, or information or belief, to enable Defendant to answer
6 the allegations contained within this paragraph, as stated, and on those grounds denies
7 generally and specifically each and every allegation contained therein – and
8 Defendant denies all liability and/or wrongdoing.

9 69. Answering Paragraph 69 of the FAC: Answering Defendant repeats,
10 reiterates, and re-alleges all of the admissions and denials contained in the foregoing
11 Answer which are set forth to each and every allegation contained in paragraphs 1
12 through 68, inclusive, of the FAC.

13 70. Answering Paragraph 70 of the FAC: Answering Defendant does not
14 have sufficient knowledge, or information or belief, to enable Defendant to answer
15 the allegations contained within this paragraph, as stated, and on those grounds denies
16 generally and specifically each and every allegation contained therein – and
17 Defendant denies all liability and/or wrongdoing.

18 71. Answering Paragraph 71 of the FAC including subsections (a) – (k):
19 Answering Defendant does not have sufficient knowledge, or information or belief,
20 to enable Defendant to answer the allegations contained within this paragraph, as
21 stated, and on those grounds denies generally and specifically each and every
22 allegation contained therein – and Defendant denies all liability and/or wrongdoing.

23 72. Answering Paragraph 72 of the FAC: Answering Defendant does not
24 have sufficient knowledge, or information or belief, to enable Defendant to answer
25 the allegations contained within this paragraph, as stated, and on those grounds denies
26 generally and specifically each and every allegation contained therein – and
27 Defendant denies all liability and/or wrongdoing.

28 73. Answering Paragraph 73 of the FAC including subsections (a) – (f):

1 Answering Defendant does not have sufficient knowledge, or information or belief,
2 to enable Defendant to answer the allegations contained within this paragraph, as
3 stated, and on those grounds denies generally and specifically each and every
4 allegation contained therein – and Defendant denies all liability and/or wrongdoing.

5 74. Answering Paragraph 74 of the FAC: Answering Defendant does not
6 have sufficient knowledge, or information or belief, to enable Defendant to answer
7 the allegations contained within this paragraph, as stated, and on those grounds denies
8 generally and specifically each and every allegation contained therein – and
9 Defendant denies all liability and/or wrongdoing.

10 75. Answering Paragraph 75 of the FAC: Answering Defendant does not
11 have sufficient knowledge, or information or belief, to enable Defendant to answer
12 the allegations contained within this paragraph, as stated, and on those grounds denies
13 generally and specifically each and every allegation contained therein – and
14 Defendant denies all liability and/or wrongdoing.

15 76. Answering Paragraph 76 of the FAC: Answering Defendant does not
16 have sufficient knowledge, or information or belief, to enable Defendant to answer
17 the allegations contained within this paragraph, as stated, and on those grounds denies
18 generally and specifically each and every allegation contained therein – and
19 Defendant denies all liability and/or wrongdoing.

20 77. Answering Paragraph 77 of the FAC: Answering Defendant does not
21 have sufficient knowledge, or information or belief, to enable Defendant to answer
22 the allegations contained within this paragraph, as stated, and on those grounds denies
23 generally and specifically each and every allegation contained therein – and
24 Defendant denies all liability and/or wrongdoing.

25 78. Answering Paragraph 78 of the FAC: Answering Defendant does not
26 have sufficient knowledge, or information or belief, to enable Defendant to answer
27 the allegations contained within this paragraph, as stated, and on those grounds denies
28 generally and specifically each and every allegation contained therein – and

1 Defendant denies all liability and/or wrongdoing.

2 79. Answering Paragraph 79 of the FAC: Answering Defendant does not
3 have sufficient knowledge, or information or belief, to enable Defendant to answer
4 the allegations contained within this paragraph, as stated, and on those grounds denies
5 generally and specifically each and every allegation contained therein – and
6 Defendant denies all liability and/or wrongdoing.

7 80. Answering Paragraph 80 of the FAC: Answering Defendant does not
8 have sufficient knowledge, or information or belief, to enable Defendant to answer
9 the allegations contained within this paragraph, as stated, and on those grounds denies
10 generally and specifically each and every allegation contained therein – and
11 Defendant denies all liability and/or wrongdoing.

12 81. Answering Paragraph 81 of the FAC: Answering Defendant repeats,
13 reiterates, and re-alleges all of the admissions and denials contained in the foregoing
14 Answer which are set forth to each and every allegation contained in paragraphs 1
15 through 80, inclusive, of the FAC.

16 82. Answering Paragraph 82 of the FAC: Answering Defendant does not
17 have sufficient knowledge, or information or belief, to enable Defendant to answer
18 the allegations contained within this paragraph, as stated, and on those grounds denies
19 generally and specifically each and every allegation contained therein – and
20 Defendant denies all liability and/or wrongdoing.

21 83. Answering Paragraph 83 of the FAC: Answering Defendant does not
22 have sufficient knowledge, or information or belief, to enable Defendant to answer
23 the allegations contained within this paragraph, as stated, and on those grounds denies
24 generally and specifically each and every allegation contained therein – and
25 Defendant denies all liability and/or wrongdoing.

26 84. Answering Paragraph 84 of the FAC: Answering Defendant does not
27 have sufficient knowledge, or information or belief, to enable Defendant to answer
28 the allegations contained within this paragraph, as stated, and on those grounds denies

1 generally and specifically each and every allegation contained therein – and
2 Defendant denies all liability and/or wrongdoing.

3 85. Answering Paragraph 85 of the FAC including subparagraphs (a)-(e):
4 Answering Defendant does not have sufficient knowledge, or information or belief,
5 to enable Defendant to answer the allegations contained within this paragraph, as
6 stated, and on those grounds denies generally and specifically each and every
7 allegation contained therein – and Defendant denies all liability and/or wrongdoing.

8 86. Answering Paragraph 86 of the FAC: Answering Defendant does not
9 have sufficient knowledge, or information or belief, to enable Defendant to answer
10 the allegations contained within this paragraph, as stated, and on those grounds denies
11 generally and specifically each and every allegation contained therein – and
12 Defendant denies all liability and/or wrongdoing.

13 87. Answering Paragraph 87 of the FAC: Answering Defendant does not
14 have sufficient knowledge, or information or belief, to enable Defendant to answer
15 the allegations contained within this paragraph, as stated, and on those grounds denies
16 generally and specifically each and every allegation contained therein – and
17 Defendant denies all liability and/or wrongdoing.

18 88. Answering Paragraph 88 of the FAC: Answering Defendant does not
19 have sufficient knowledge, or information or belief, to enable Defendant to answer
20 the allegations contained within this paragraph, as stated, and on those grounds denies
21 generally and specifically each and every allegation contained therein – and
22 Defendant denies all liability and/or wrongdoing.

23 89. Answering Paragraph 89 of the FAC: Answering Defendant does not
24 have sufficient knowledge, or information or belief, to enable Defendant to answer
25 the allegations contained within this paragraph, as stated, and on those grounds denies
26 generally and specifically each and every allegation contained therein – and
27 Defendant denies all liability and/or wrongdoing.

28 90. Answering Paragraph 90 of the FAC: Answering Defendant does not

1 have sufficient knowledge, or information or belief, to enable Defendant to answer
2 the allegations contained within this paragraph, as stated, and on those grounds denies
3 generally and specifically each and every allegation contained therein – and
4 Defendant denies all liability and/or wrongdoing.

5 91. Answering Paragraph 91 of the FAC: Answering Defendant repeats,
6 reiterates, and re-alleges all of the admissions and denials contained in the foregoing
7 Answer which are set forth to each and every allegation contained in paragraphs 1
8 through 90, inclusive, of the FAC.

9 92. Answering Paragraph 92 of the FAC: Answering Defendant does not
10 have sufficient knowledge, or information or belief, to enable Defendant to answer
11 the allegations contained within this paragraph, as stated, and on those grounds denies
12 generally and specifically each and every allegation contained therein – and
13 Defendant denies all liability and/or wrongdoing.

14 93. Answering Paragraph 93 of the FAC: Answering Defendant does not
15 have sufficient knowledge, or information or belief, to enable Defendant to answer
16 the allegations contained within this paragraph, as stated, and on those grounds denies
17 generally and specifically each and every allegation contained therein – and
18 Defendant denies all liability and/or wrongdoing.

19 94. Answering Paragraph 94 of the FAC: Answering Defendant does not
20 have sufficient knowledge, or information or belief, to enable Defendant to answer
21 the allegations contained within this paragraph, as stated, and on those grounds denies
22 generally and specifically each and every allegation contained therein – and
23 Defendant denies all liability and/or wrongdoing.

24 95. Answering Paragraph 95 of the FAC: Answering Defendant repeats,
25 reiterates, and re-alleges all of the admissions and denials contained in the foregoing
26 Answer which are set forth to each and every allegation contained in paragraphs 1
27 through 94, inclusive, of the FAC.

28 96. Answering Paragraph 96 of the FAC: Answering Defendant City of

1 Fresno does not have sufficient knowledge, or information or belief, to enable
2 Defendant to answer the allegations contained within this paragraph, as stated, and on
3 those grounds denies generally and specifically each and every allegation contained
4 therein – and Defendant denies all liability and/or wrongdoing.

5 97. Answering Paragraph 97 of the FAC: Answering Defendant City of
6 Fresno does not have sufficient knowledge, or information or belief, to enable
7 Defendant to answer the allegations contained within this paragraph, as stated, and on
8 those grounds denies generally and specifically each and every allegation contained
9 therein – and Defendant denies all liability and/or wrongdoing.

10 98. Answering Paragraph 98 of the FAC: Answering Defendant City of
11 Fresno does not have sufficient knowledge, or information or belief, to enable
12 Defendant to answer the allegations contained within this paragraph, as stated, and on
13 those grounds denies generally and specifically each and every allegation contained
14 therein – and Defendant denies all liability and/or wrongdoing.

15 99. Answering Paragraph 99 of the FAC: Answering Defendant City of
16 Fresno does not have sufficient knowledge, or information or belief, to enable
17 Defendant to answer the allegations contained within this paragraph, as stated, and on
18 those grounds denies generally and specifically each and every allegation contained
19 therein – and Defendant denies all liability and/or wrongdoing.

20 100. Answering Paragraph 100 of the FAC: Answering Defendant repeats,
21 reiterates, and re-alleges all of the admissions and denials contained in the foregoing
22 Answer which are set forth to each and every allegation contained in paragraphs 1
23 through 99, inclusive, of the FAC.

24 101. Answering Paragraph 101 of the FAC: Answering Defendant City of
25 Fresno does not have sufficient knowledge, or information or belief, to enable
26 Defendant to answer the allegations contained within this paragraph, as stated, and on
27 those grounds denies generally and specifically each and every allegation contained
28 therein – and Defendant denies all liability and/or wrongdoing.

1 102. Answering Paragraph 102 of the FAC: Answering Defendant City of
2 Fresno does not have sufficient knowledge, or information or belief, to enable
3 Defendant to answer the allegations contained within this paragraph, as stated, and on
4 those grounds denies generally and specifically each and every allegation contained
5 therein – and Defendant denies all liability and/or wrongdoing.

6 103. Answering Paragraph 103 of the FAC: Answering Defendant City of
7 Fresno does not have sufficient knowledge, or information or belief, to enable
8 Defendant to answer the allegations contained within this paragraph, as stated, and on
9 those grounds denies generally and specifically each and every allegation contained
10 therein – and Defendant denies all liability and/or wrongdoing.

11 104. Answering Paragraph 104 of the FAC: Answering Defendant City of
12 Fresno does not have sufficient knowledge, or information or belief, to enable
13 Defendant to answer the allegations contained within this paragraph, as stated, and on
14 those grounds denies generally and specifically each and every allegation contained
15 therein – and Defendant denies all liability and/or wrongdoing.

16 105. Answering Paragraph 105 of the FAC: Answering Defendant City of
17 Fresno does not have sufficient knowledge, or information or belief, to enable
18 Defendant to answer the allegations contained within this paragraph, as stated, and on
19 those grounds denies generally and specifically each and every allegation contained
20 therein – and Defendant denies all liability and/or wrongdoing.

21 106. Answering Paragraph 106 of the FAC including subparagraphs (a)-(k):
22 Answering Defendant City of Fresno does not have sufficient knowledge, or
23 information or belief, to enable Defendant to answer the allegations contained within
24 this paragraph, as stated, and on those grounds denies generally and specifically each
25 and every allegation contained therein – and Defendant denies all liability and/or
26 wrongdoing.

27 107. Answering Paragraph 107 of the FAC: Answering Defendant City of
28 Fresno does not have sufficient knowledge, or information or belief, to enable

1 Defendant to answer the allegations contained within this paragraph, as stated, and on
2 those grounds denies generally and specifically each and every allegation contained
3 therein – and Defendant denies all liability and/or wrongdoing.

4 108. Answering Paragraph 108 of the FAC: Answering Defendant City of
5 Fresno does not have sufficient knowledge, or information or belief, to enable
6 Defendant to answer the allegations contained within this paragraph, as stated, and on
7 those grounds denies generally and specifically each and every allegation contained
8 therein – and Defendant denies all liability and/or wrongdoing.

9 109. Answering Paragraph 109 of the FAC: Answering Defendant City of
10 Fresno does not have sufficient knowledge, or information or belief, to enable
11 Defendant to answer the allegations contained within this paragraph, as stated, and on
12 those grounds denies generally and specifically each and every allegation contained
13 therein – and Defendant denies all liability and/or wrongdoing.

14 110. Answering Paragraph 110 of the FAC: Answering Defendant repeats,
15 reiterates, and re-alleges all of the admissions and denials contained in the foregoing
16 Answer which are set forth to each and every allegation contained in paragraphs 1
17 through 109, inclusive, of the FAC.

18 111. Answering Paragraph 111 of the FAC: Answering Defendant does not
19 have sufficient knowledge, or information or belief, to enable Defendant to answer
20 the allegations contained within this paragraph, as stated, and on those grounds denies
21 generally and specifically each and every allegation contained therein – and
22 Defendant denies all liability and/or wrongdoing.

23 112. Answering Paragraph 112 of the FAC: Answering Defendant does not
24 have sufficient knowledge, or information or belief, to enable Defendant to answer
25 the allegations contained within this paragraph, as stated, and on those grounds denies
26 generally and specifically each and every allegation contained therein – and
27 Defendant denies all liability and/or wrongdoing.

28 113. Answering Paragraph 113 of the FAC: Answering Defendant does not

1 have sufficient knowledge, or information or belief, to enable Defendant to answer
2 the allegations contained within this paragraph, as stated, and on those grounds denies
3 generally and specifically each and every allegation contained therein – and
4 Defendant denies all liability and/or wrongdoing.

5 114. Answering Paragraph 114 of the FAC: Answering Defendant does not
6 have sufficient knowledge, or information or belief, to enable Defendant to answer
7 the allegations contained within this paragraph, as stated, and on those grounds denies
8 generally and specifically each and every allegation contained therein – and
9 Defendant denies all liability and/or wrongdoing.

10 115. Answering Paragraph 115 of the FAC: Answering Defendant does not
11 have sufficient knowledge, or information or belief, to enable Defendant to answer
12 the allegations contained within this paragraph, as stated, and on those grounds denies
13 generally and specifically each and every allegation contained therein – and
14 Defendant denies all liability and/or wrongdoing.

15 116. Answering Paragraph 116 of the FAC: Answering Defendant does not
16 have sufficient knowledge, or information or belief, to enable Defendant to answer
17 the allegations contained within this paragraph, as stated, and on those grounds denies
18 generally and specifically each and every allegation contained therein – and
19 Defendant denies all liability and/or wrongdoing.

20 117. Answering Paragraph 117 of the FAC: Answering Defendant does not
21 have sufficient knowledge, or information or belief, to enable Defendant to answer
22 the allegations contained within this paragraph, as stated, and on those grounds denies
23 generally and specifically each and every allegation contained therein – and
24 Defendant denies all liability and/or wrongdoing.

25 118. Answering Paragraph 118 of the FAC: Answering Defendant repeats,
26 reiterates, and re-alleges all of the admissions and denials contained in the foregoing
27 Answer which are set forth to each and every allegation contained in paragraphs 1
28 through 117, inclusive, of the FAC.

1 119. Answering Paragraph 119 of the FAC: Answering Defendant does not
2 have sufficient knowledge, or information or belief, to enable Defendant to answer
3 the allegations contained within this paragraph, as stated, and on those grounds denies
4 generally and specifically each and every allegation contained therein – and
5 Defendant denies all liability and/or wrongdoing.

6 120. Answering Paragraph 120 of the FAC: Answering Defendant does not
7 have sufficient knowledge, or information or belief, to enable Defendant to answer
8 the allegations contained within this paragraph, as stated, and on those grounds denies
9 generally and specifically each and every allegation contained therein – and
10 Defendant denies all liability and/or wrongdoing.

11 121. Answering Paragraph 121 of the FAC: Answering Defendant does not
12 have sufficient knowledge, or information or belief, to enable Defendant to answer
13 the allegations contained within this paragraph, as stated, and on those grounds denies
14 generally and specifically each and every allegation contained therein – and
15 Defendant denies all liability and/or wrongdoing.

16 122. Answering Paragraph 122 of the FAC: Answering Defendant does not
17 have sufficient knowledge, or information or belief, to enable Defendant to answer
18 the allegations contained within this paragraph, as stated, and on those grounds denies
19 generally and specifically each and every allegation contained therein – and
20 Defendant denies all liability and/or wrongdoing.

21 123. Answering Paragraph 123 of the FAC: Answering Defendant does not
22 have sufficient knowledge, or information or belief, to enable Defendant to answer
23 the allegations contained within this paragraph, as stated, and on those grounds denies
24 generally and specifically each and every allegation contained therein – and
25 Defendant denies all liability and/or wrongdoing.

26 124. Answering Paragraph 124 of the FAC: Answering Defendant does not
27 have sufficient knowledge, or information or belief, to enable Defendant to answer
28 the allegations contained within this paragraph, as stated, and on those grounds denies

1 generally and specifically each and every allegation contained therein – and
2 Defendant denies all liability and/or wrongdoing.

3 125. Answering Paragraph 125 of the FAC: Answering Defendant does not
4 have sufficient knowledge, or information or belief, to enable Defendant to answer
5 the allegations contained within this paragraph, as stated, and on those grounds denies
6 generally and specifically each and every allegation contained therein – and
7 Defendant denies all liability and/or wrongdoing.

8 126. Answering Paragraph 126 of the FAC: Answering Defendant does not
9 have sufficient knowledge, or information or belief, to enable Defendant to answer
10 the allegations contained within this paragraph, as stated, and on those grounds denies
11 generally and specifically each and every allegation contained therein – and
12 Defendant denies all liability and/or wrongdoing.

13 127. Answering Paragraph 127 of the FAC: Answering Defendant repeats,
14 reiterates, and re-alleges all of the admissions and denials contained in the foregoing
15 Answer which are set forth to each and every allegation contained in paragraphs 1
16 through 126, inclusive, of the FAC.

17 128. Answering Paragraph 128 of the FAC: Answering Defendant does not
18 have sufficient knowledge, or information or belief, to enable Defendant to answer
19 the allegations contained within this paragraph, as stated, and on those grounds denies
20 generally and specifically each and every allegation contained therein – and
21 Defendant denies all liability and/or wrongdoing.

22 129. Answering Paragraph 129 of the FAC: Answering Defendant does not
23 have sufficient knowledge, or information or belief, to enable Defendant to answer
24 the allegations contained within this paragraph, as stated, and on those grounds denies
25 generally and specifically each and every allegation contained therein – and
26 Defendant denies all liability and/or wrongdoing.

27 130. Answering Paragraph 130 of the FAC: Answering Defendant does not
28 have sufficient knowledge, or information or belief, to enable Defendant to answer

1 the allegations contained within this paragraph, as stated, and on those grounds denies
2 generally and specifically each and every allegation contained therein – and
3 Defendant denies all liability and/or wrongdoing.

4 131. Answering Paragraph 131 of the FAC: Answering Defendant does not
5 have sufficient knowledge, or information or belief, to enable Defendant to answer
6 the allegations contained within this paragraph, as stated, and on those grounds denies
7 generally and specifically each and every allegation contained therein – and
8 Defendant denies all liability and/or wrongdoing.

9 132. Answering Paragraph 132 of the FAC: Answering Defendant does not
10 have sufficient knowledge, or information or belief, to enable Defendant to answer
11 the allegations contained within this paragraph, as stated, and on those grounds denies
12 generally and specifically each and every allegation contained therein – and
13 Defendant denies all liability and/or wrongdoing.

14 133. Answering Paragraph 133 of the FAC: Answering Defendant does not
15 have sufficient knowledge, or information or belief, to enable Defendant to answer
16 the allegations contained within this paragraph, as stated, and on those grounds denies
17 generally and specifically each and every allegation contained therein – and
18 Defendant denies all liability and/or wrongdoing.

19 134. Answering Paragraph 134 of the FAC: Answering Defendant repeats,
20 reiterates, and re-alleges all of the admissions and denials contained in the foregoing
21 Answer which are set forth to each and every allegation contained in paragraphs 1
22 through 133, inclusive, of the FAC.

23 135. Answering Paragraph 135 of the FAC: Answering Defendant does not
24 have sufficient knowledge, or information or belief, to enable Defendant to answer
25 the allegations contained within this paragraph, as stated, and on those grounds denies
26 generally and specifically each and every allegation contained therein – and
27 Defendant denies all liability and/or wrongdoing.

28 136. Answering Paragraph 136 of the FAC: Answering Defendant does not

1 have sufficient knowledge, or information or belief, to enable Defendant to answer
2 the allegations contained within this paragraph, as stated, and on those grounds denies
3 generally and specifically each and every allegation contained therein – and
4 Defendant denies all liability and/or wrongdoing.

5 137. Answering Paragraph 137 of the FAC: Answering Defendant does not
6 have sufficient knowledge, or information or belief, to enable Defendant to answer
7 the allegations contained within this paragraph, as stated, and on those grounds denies
8 generally and specifically each and every allegation contained therein – and
9 Defendant denies all liability and/or wrongdoing.

10 138. Answering Paragraph 138 of the FAC: Answering Defendant does not
11 have sufficient knowledge, or information or belief, to enable Defendant to answer
12 the allegations contained within this paragraph, as stated, and on those grounds denies
13 generally and specifically each and every allegation contained therein – and
14 Defendant denies all liability and/or wrongdoing.

15 139. Answering Paragraph 139 of the FAC: Answering Defendant does not
16 have sufficient knowledge, or information or belief, to enable Defendant to answer
17 the allegations contained within this paragraph, as stated, and on those grounds denies
18 generally and specifically each and every allegation contained therein – and
19 Defendant denies all liability and/or wrongdoing.

20 140. Answering Paragraph 140 of the FAC: Answering Defendant does not
21 have sufficient knowledge, or information or belief, to enable Defendant to answer
22 the allegations contained within this paragraph, as stated, and on those grounds denies
23 generally and specifically each and every allegation contained therein – and
24 Defendant denies all liability and/or wrongdoing.

25 141. Answering Paragraph 141 of the FAC: Answering Defendant does not
26 have sufficient knowledge, or information or belief, to enable Defendant to answer
27 the allegations contained within this paragraph, as stated, and on those grounds denies
28 generally and specifically each and every allegation contained therein – and

1 Defendant denies all liability and/or wrongdoing.

2 142. Answering Paragraph 142 of the FAC: Answering Defendant does not
3 have sufficient knowledge, or information or belief, to enable Defendant to answer
4 the allegations contained within this paragraph, as stated, and on those grounds denies
5 generally and specifically each and every allegation contained therein – and
6 Defendant denies all liability and/or wrongdoing.

7 143. Answering Paragraph 143 of the FAC: Answering Defendant does not
8 have sufficient knowledge, or information or belief, to enable Defendant to answer
9 the allegations contained within this paragraph, as stated, and on those grounds denies
10 generally and specifically each and every allegation contained therein – and
11 Defendant denies all liability and/or wrongdoing.

12 144. Answering Paragraph 144 of the FAC: Answering Defendant does not
13 have sufficient knowledge, or information or belief, to enable Defendant to answer
14 the allegations contained within this paragraph, as stated, and on those grounds denies
15 generally and specifically each and every allegation contained therein – and
16 Defendant denies all liability and/or wrongdoing.

17 145. Answering Paragraph 145 of the FAC: Answering Defendant does not
18 have sufficient knowledge, or information or belief, to enable Defendant to answer
19 the allegations contained within this paragraph, as stated, and on those grounds denies
20 generally and specifically each and every allegation contained therein – and
21 Defendant denies all liability and/or wrongdoing.

22 146. Answering plaintiffs' Prayer For Relief, including subsections (1)
23 through (8), Defendant denies all liability to plaintiffs, including, but not limited to,
24 all liability for any and all damages, including compensatory damages, special
25 damages, funeral and burial expenses, punitive and exemplary damages, statutory
26 damages, attorneys' fees, costs of suit, pre-death pain and suffering and loss of life,
27 wrongful death damages, and/or for any relief of any kind from Defendant to
28 plaintiffs.

1 147. To the extent plaintiffs assert any other claims or contentions not
2 specifically addressed herein above, Defendant generally and specifically denies each
3 and every remaining allegation and/or claim – and Defendant denies all liability
4 and/or wrongdoing.

5 **AFFIRMATIVE DEFENSES**

6 1. As separate and affirmative defenses, Defendant alleges as follows:

7 **FIRST AFFIRMATIVE DEFENSE**

8 **(Failure to State a Claim)**

9 2. Plaintiffs' FAC, and each alleged cause of action in it, fails to state a
10 claim upon which relief can be granted.

11 3. Plaintiffs' FAC also fails to state a claim against any Defendant in this
12 action.

13 **SECOND AFFIRMATIVE DEFENSE**

14 **(Tort Claims Act Violation)**

15 4. This action is barred by plaintiffs' failure to comply with the government
16 tort claims presentation requirements, California Government Code § 900, *et seq.*,
17 including but not limited to §§ 900, 900.4, 901, 905, 905.2, 910, 911, 911.2, 911.4,
18 945.4, 945.6, 946.6, 950.2, and 950.6, to the extent applicable.

19 5. The FAC is barred based on plaintiffs' failure to exhaust administrative
20 remedies prior to filing this lawsuit.

21 6. Plaintiffs' recovery is barred because the causes of action stated in the
22 FAC do not correspond with the legal claims asserted in plaintiffs' written claim. The
23 FAC thereby alleges legal bases for recovery which are not fairly reflected in the
24 written claim(s).

25 **THIRD AFFIRMATIVE DEFENSE**

26 **(Waiver, Estoppel, Unclean Hands)**

27 7. Defendant alleges that plaintiffs' actions are barred by reason of conduct,
28 actions and inactions of plaintiffs which amount to and constitute a waiver of any

1 right plaintiff(s) may or might have had in reference to the matters and things alleged
2 in the FAC, or that otherwise estop plaintiffs from recovery in this action, including
3 but not limited to the doctrine of unclean hands.

4 **FOURTH AFFIRMATIVE DEFENSE**

5 **(Failure to Mitigate Damages)**

6 8. Plaintiffs' claims are barred or limited to the extent plaintiffs failed to
7 mitigate plaintiffs' injuries or damages, if there were any. Plaintiffs have failed to
8 mitigate the damages, if any, which plaintiff(s) has/have sustained, and to exercise
9 reasonable care to avoid the consequences of harms, if any, in that, among other
10 things, plaintiffs have failed to use reasonable diligence in caring for any injuries,
11 failed to use reasonable means to prevent aggravation of any injuries and failed to
12 take reasonable precautions to reduce any injuries and damages.

13 **FIFTH AFFIRMATIVE DEFENSE**

14 **(Contributory and/or Comparative Liability)**

15 9. Plaintiffs' claims are barred or limited by plaintiff's decedent's
16 contributory/comparative negligence or other conduct, acts, or omissions, and to the
17 extent plaintiffs' decedent suffered any injury or damages, it was the result of his own
18 negligent or deliberate actions or omissions.

19 10. Plaintiffs' recovery is barred because any injury or damage suffered by
20 plaintiffs' decedent was caused solely by reason of his wrongful acts and conduct and
21 the willful resistance to a peace officer in the discharge their duties. The conduct set
22 forth in the FAC, if and to the extent it occurred, was privileged and justified and done
23 with a good faith belief that it was correct and no action may be taken against the
24 answering Defendants on account of such conduct.

25 **SIXTH AFFIRMATIVE DEFENSE**

26 **(Public Entity/Employee Immunity for Others' Torts)**

27 11. Plaintiffs' recovery is barred because public entities and employees are
28 immune from liability for any injury caused by the act or omission of another person.

Gov. Code §§ 815 *et seq.*, 820.2 *et seq.*

12. The answering Defendants is/are informed and believe and thereon allege that if plaintiffs sustained any injury or damages, such injury or damages were solely caused or contributed to by the wrongful conduct of other defendants and/or entities or persons other than the answering Defendant. To the extent that plaintiffs' damages were so caused, any recovery by plaintiffs as against the answering Defendant should be subject to proportionately comparative equitable indemnity/contribution from such third parties.

SEVENTH AFFIRMATIVE DEFENSE

(Public Entity/Employee Immunity for Discretionary Acts)

13. There is no liability for any injury or damages, if any there were, resulting from an exercise of discretion vested in a public employee, whether or not such discretion be abused. Gov. Code § 815.2, 820.2, 820.4, 820.8, 820 *et seq.*

14. Plaintiffs' recovery is barred because public entities and employees are immune from liability for discharging their mandatory duties with reasonable diligence.

15. A public employee may not be held liable for injuries or damages, if any, caused by failure to adopt or by adoption of an enactment or by failure to enforce an enactment and/or law, for an injury caused by his issuance, denial, suspension or revocation or by his failure or refusal to issue, deny, suspend or revoke, any permit, license, certificate, approval, order, or similar authorization, where he is authorized by enactment to determine whether or not such authorization should be issued, denied, suspended or revoked, pursuant to Government Code §§ 818.2, 818.4, 818.8, 821 and 821.2. Based thereon, the answering defendants is/are immune from liability for any injuries claimed by plaintiffs, herein.

16. Defendant(s) is/are immune for any detriment resulting from any of its actions or omissions at the time of the incident of which plaintiffs complain pursuant to Government Code § 810 *et seq.*, 815 *et seq.*, 820 *et seq.*, and 845 *et seq.*, including,

1 but not limited to, §§ 810, 810.2, 810.4, 810.6, 810.8, 811, 811.2, 811.4, 811.6, 811.8,
 2 820.6, 820.8, 821, 821.2, 821.4, 821.6, 821.8, 822.2, 830.5, 830.6, 835.4, 844.6, and
 3 Government Code §§ 854, *et seq.*, including, but not limited to, §§ 845.6, 854.6,
 4 854.8(a)(2), and §§ 855.4, 855.6, 855.8 and 856.4.

5 **EIGHTH AFFIRMATIVE DEFENSE**

6 **(Public Entity Immunity)**

7 17. To the extent that the FAC attempts to predicate liability upon any public
 8 entity defendant or any employee thereof for purported negligence in retention, hiring,
 9 employment, training, or supervision of any public employee, such liability is barred
 10 by Government Code sections 815.2 and 820.2 and *Herndon v. County of Marin*
 11 (1972) 25 Cal. App. 3d 933, 935, 936, *rev'd on other grounds by Sullivan v. County*
 12 *of Los Angeles* (1974) 12 Cal.3d 710; and by the lack of any duty running to plaintiffs;
 13 by the fact that any such purported act or omission is governed exclusively by statute
 14 and is outside the purview of any public employees' authority; and by the failure of
 15 any such acts or omissions to be the proximate or legal cause of any injury alleged in
 16 the Complaint. *See de Villers v. County of San Diego*, 156 Cal.App.4th 238, 251-253,
 17 255-256 (2007).

18 18. Defendant may not be held liable on a *respondeat superior* theory for
 19 any negligent or wrongful act or omission on the part of any subordinate. Cal.
 20 Government Code §§ 844.6, 845.6; Cal. Civil Code § 2351; *Malloy v. Fong* (1951)
 21 37 Cal.2d 356, 378-379; *Monell v. Department of Social Services of the City of New*
 22 *York* (1978) 436 U.S. 658; *Larez v. City of Los Angeles* (9th Cir. 1991) 946 F.2d 630,
 23 645-646; *cf. City of Canton v. Harris*, 489 U.S. 378, 388-389 (1989); *City of Los*
 24 *Angeles v. Heller*, 475 U.S. 796 (1986).

25 **NINTH AFFIRMATIVE DEFENSE**

26 **(Qualified Immunity & Good Faith Immunity)**

27 19. Defendant City and its agents or officers at all times relevant to this
 28 action acted reasonably and prudently under the circumstances. Defendants therefore

1 assert the individual defendant's Qualified Immunity from liability to the fullest extent
2 applicable.

3 20. The individual defendants are immune from liability under the Federal
4 Civil Rights Act because a reasonable police officer could believe that his acts and
5 conduct were objectively reasonable under the totality of the circumstances.
6 Defendants are immune from liability under the Federal Civil Rights Act because their
7 conduct did not violate clearly established rights of which a reasonable officer would
8 have known. Defendants are also immune from liability under the doctrine of
9 Qualified Immunity.

10 21. At all relevant times, Defendants acted within the scope of discretion,
11 with due care, and good faith fulfillment of responsibilities pursuant to applicable
12 statutes, rules and regulation, within the bounds of reason, and with the good faith
13 belief that their actions comported with all applicable federal and state laws. *Harlow*
14 *v. Fitzgerald* (1982) 457 U.S. 800; Cal Gov. Code §§ 815.2 and 820.2.

TENTH AFFIRMATIVE DEFENSE

(Assumption of Risk)

17 22. At the time and place referred to in the FAC, and before such event,
18 plaintiffs' decedent knew, appreciated, and understood each and every risk involved
19 in placing himself in the position which plaintiff then assumed, and willingly,
20 knowingly and voluntarily assumed each of such risks, including, but not limited to,
21 the risk of suffering personal bodily injury and/or lawful deprivation of right(s).

22 23. Defendants contend that they cannot fully anticipate all affirmative
23 defenses that may be applicable to this action based on the conclusory terms used in
24 plaintiffs' Complaint. Accordingly, Defendants expressly reserve the right to assert
25 additional affirmative defenses if and to the extent that such affirmative defenses
26 become applicable.

27 ///

28 ///

JURY DEMAND

24. Defendant demands a trial by jury as to each issue triable by jury.

PRAYER FOR RELIEF

WHEREFORE, the answering Defendant prays as follows:

1. That plaintiffs take nothing by this action;

2. That Defendant be awarded attorneys' fees, costs of suit and costs of proof, and such other relief as the Court deems just and proper.

DATED: October 30, 2024

**MANNING & KASS
ELLROD, RAMIREZ, TRESTER LLP**

By: /s/ Mildred K. O'Linn

Mildred K. O'Linn

Lynn Carpenter

Maya Sorensen

Attorneys for Defendants, CITY OF
FRESNO